

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

MOTORS LIQUIDATION COMPANY ET AL.,

f/k/a GENERAL MOTORS CORP., ET AL.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 14, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Continuing Objections to the Order Authorizing the  
Sale of Assets Pursuant to the Amended and Restated Master Sale  
and Purchase Agreement with NGMCO, Inc.

Motion of ACE American Insurance Company and Affiliated  
Companies to Compel Debtors to Assume or Reject Insurance  
Policies and Related Agreements.

HEARING re Debtors' Motion for Order Pursuant to Section  
502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3)  
Establishing the Deadline for Filing Proofs of Claim Including  
Claims Under Section 503(b)(9) of the Bankruptcy Code and  
Procedures Relating Thereto and Approving the Form and Manner  
of Notice Thereof.

HEARING re Motion of Debtors for Entry of Order Pursuant to 11  
U.S.C Sections 327 (a) and 330 Authorizing the Debtors to Amend  
the Terms of Their Engagement with Brownfield Partners, LLC.

HEARING re Debtors' Sixth Omnibus Motion Pursuant to 11 U.S.C.  
Section 365 to Reject Certain Executory Contracts and Unexpired  
Leases of Nonresidential Real Property.

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HEARING re Motion of Debtors for Order Pursuant to Section  
365(d)(4) of the Bankruptcy Code Extending Time to Assume or  
Reject Unexpired Leases of Nonresidential Real Property.

HEARING re Motion of Debtors for Entry of Order Pursuant to 11  
U.S.C. Section 1121(d) Extending Exclusive Periods in Which  
Debtors May File Chapter 11 Plan and Solicit Acceptances  
Thereof.

HEARING re Verified Motion of Environmental Testing Corporation  
(ETC) for Payment of Administrative Expenses - Stip to be  
Submitted.

Transcribed by: Penina Wolicki

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1 P R O C E E D I N G S

2 THE COURT: Okay, GM. Good morning, Mr. Smolinsky,  
3 Mr. Karotkin.

4 MR. SMOLINSKY: Good morning, sir. Good morning, Your  
5 Honor. Joe Smolinsky of Weil, Gotshal & Manges for the  
6 debtors. I think we have a fairly short calendar today. I  
7 think things will move quickly.

8 I'll just jump into the first matter we have on the  
9 agenda this morning, which is a status conference on cure  
10 objections with respect to the sale that closed on July 10th.  
11 If I may, Your Honor, I'd like to hand up a one-page chart.

12 THE COURT: Thank you. Mr. Smolinsky, I want to  
13 interrupt you for a second. I meant to deal with this at the  
14 very outset. I have an attorney intern with me who is going to  
15 be working in my chambers until she begins with the Weil firm  
16 in approximately January. We're going to be entering a formal  
17 order in this case and in other cases in which Weil is  
18 involved. She's going to be recusing herself from all matters  
19 involving this GM case and in the other Weil-related cases. So  
20 I just wanted to note that on the record. Her name is Candace  
21 Arthur. You'll see her on your left.

22 MR. SMOLINSKY: Thank you, Your Honor. This chart  
23 shows a comparison of where we stood on August 2nd, which is  
24 the last time we were before you on a cure status conference,  
25 and as of September 12th. And you'll see that with respect to

1 remaining cure objections before this Court, on August 2nd we  
2 had 179 pending counterparties that had pending objections.  
3 Today we have 46. At the bottom, if we pull out those that we  
4 have agreements with that are simply awaiting formal  
5 documentation, we're down to 27 counterparties.

6 Your Honor, we'd like to fix another date for a status  
7 conference in the second half of October. By that time, I  
8 think we'll have a very good understanding of what, if any,  
9 cure objections we would have to start thinking about  
10 scheduling for Court intervention. But I don't believe that  
11 we're going to have many at all.

12 THE COURT: Sure. That makes total sense. Just work  
13 out a mutually satisfactory date with Ms. Blum and make it  
14 happen.

15 MR. SMOLINSKY: Thank you. Your Honor, there's a  
16 matter with ACE Insurance. I don't know if it's on your  
17 calendar. There was a withdrawal that was filed, I think  
18 Thursday or Friday of last week. It's a motion to compel  
19 assumption and assignment or rejection. I don't know if you  
20 have it on your calendar --

21 THE COURT: I do have it on my calendar, but it's been  
22 withdrawn?

23 MR. SMOLINSKY: Well, Your Honor, I wanted to give,  
24 just as a housekeeping matter, an update. We had noticed ACE  
25 Insurance contracts, which are insurance policies, for

1 assumption and assignment in connection with the regular  
2 procedures. ACE filed an objection to that notice. We had  
3 been in the process of working things out. They ultimately  
4 filed a motion to compel assumption or rejection.

5 THE COURT: Wait. I lost you. I thought I heard you  
6 say half a second ago that you had volunteered to assume and  
7 assign it, and they still wanted you to --

8 MR. SMOLINSKY: Yes, Your Honor.

9 THE COURT: -- assume and assign it?

10 MR. SMOLINSKY: Yes, Your Honor.

11 THE COURT: Or make a decision?

12 MR. SMOLINSKY: They --

13 THE COURT: What am I missing?

14 MR. SMOLINSKY: -- they weren't happy with the level  
15 of information that we provided them with this notice. These  
16 are insurance policies. There are hundreds of policies. There  
17 are very complicated issues with respect to how those contracts  
18 would be assumed and assigned. And ultimately, they wanted us  
19 to enter into an assumption and assignment agreement that would  
20 set out the respective responsibilities of the parties in  
21 greater detail than simply the sale order.

22 Your Honor, the debtors are selling insurance  
23 policies, but at the same time, they're reserving their rights  
24 to assert claims that they would have under the policies, as an  
25 additional insured. And as the debtors, we wanted to make sure



1 that we continued to have the ability to assert claims under  
2 the policy, even though ownership of the policy had been  
3 transferred to the purchaser. And in fact, the purchaser was  
4 intending ACE to continue to provide coverage for their  
5 operations on a post-sale basis. So it was a complicated  
6 transaction.

7 THE COURT: Right. But I assume that you and the  
8 purchaser want to reserve the right to do whatever you want,  
9 and you're willing to give ACE an opportunity to be heard if it  
10 thinks that either you or the new purchaser are acting  
11 inappropriately.

12 MR. SMOLINSKY: That's right, Your Honor. And ACE  
13 wanted to make sure that if there are obligations on the part  
14 of the debtors for asserting claims, that we would be  
15 responsible for our obligations under the policy with respect  
16 to those claims.

17 THE COURT: Um-hum.

18 MR. SMOLINSKY: So we did ultimately reach agreement  
19 on an assumption and assignment agreement. That is why the  
20 matter was withdrawn and taken off calendar. In discussions  
21 with the committee on Friday, they asked for additional time to  
22 understand the interrelationships between the purchaser and the  
23 debtors on these policies. We've agreed to adjourn the ACE  
24 matters to -- basically restore it to the calendar.

25 It wasn't fair on ACE's part. They withdrew the

1 motion based on the expectation that the agreement would be  
2 handed up to Your Honor today. And since it's not, we are  
3 willing to restore it to the calendar. I think we put on our  
4 agenda an October 6 date. But this is an important matter for  
5 the purchaser. They are currently operating, perhaps, without  
6 full insurance benefits. So what I propose, Your Honor, is  
7 that we put it on -- restore it back on the calendar for  
8 September 30th, and in the meantime we are preparing a  
9 presentation for the committee. And to the extent that we get  
10 the committee's consent, we would just submit it to Your Honor  
11 for signature. That would resolve the cure objection and would  
12 also result, again, in the withdrawal of the motion to compel.

13 THE COURT: Sure. Either counsel for ACE or the  
14 committee, Mr. Rogoff, want to be heard on this?

15 MR. ROGOFF: Good morning, Your Honor. Adam Rogoff,  
16 Kramer Levin, on behalf of the creditors' committee. We're  
17 going to work with the debtor to try to get an understanding of  
18 the different contracts that are being assumed and assigned.  
19 As counsel for the debtors indicated, this is not simply a  
20 matter of assuming and assigning an agreement over to a  
21 purchaser outright, relieving the estate of potential  
22 liability, but that there could be claims that the agreement  
23 contemplated would be asserted against the estate on an  
24 administrative basis --

25 THE COURT: And you don't want to give up the right to

1 get the benefits of that if there are rights to be had?

2 MR. ROGOFF: Well, we just simply want to make sure we  
3 understand, first, that the estate remains protected under  
4 insurance policies as a matter of the agreement or applicable  
5 law, but also, more importantly, that we just have an  
6 understanding of what the potential costs could be to the  
7 estate on a go-forward basis.

8 We will work with the debtors diligently to understand  
9 the agreements, and we do hope that the agreements will allow  
10 for handing up a consensual order.

11 THE COURT: Fair enough. Okay. Makes total sense,  
12 Mr. Smolinsky. So just make it happen.

13 MR. SMOLINSKY: Thank you, Your Honor. At this point,  
14 there's one more contested matter, the bar date, and I would  
15 like to cede the podium to Mr. Karotkin.

16 THE COURT: Sure. Okay. Is somebody here from Mr.  
17 Esserman's firm?

18 MR. D'APICE: Good morning, Your Honor. Peter D'Apice  
19 from Mr. Esserman's firm.

20 THE COURT: Okay. Mr. Karotkin, I'll let you speak in  
21 a moment. But I read the papers here. Unless you, Mr.  
22 D'Apice, can get me -- bring me something to my attention that  
23 isn't in your papers, I'm not of a mind to provide for any  
24 special noticing for asbestos claims. I think that would be  
25 wholly inappropriate. So it seems to me, the principal issue

1 that I need to deal with is, is a forty-five days right or  
2 would I be better served providing for maybe sixty days on the  
3 amount of time. But I also need to know whether that would  
4 have a material adverse effect upon the debtors or the  
5 creditors who are involved.

6 I agreed with the point that the notice was kind of  
7 verbose and legalese. But since so many claims were scheduled,  
8 I don't know if that's a big deal. I noticed a lack of an  
9 objection by the creditors' committee. Let me hear if there is  
10 any reason why treating asbestos claimants any differently than  
11 other creditors in this case, most obviously tort claimants, is  
12 warranted. This is not an asbestos-driven case.

13 Mr. Karotkin, I'll hear from you first.

14 MR. KAROTKIN: Your Honor, I really don't have much to  
15 add to what is in our papers. Obviously, we certainly agree  
16 with what you just said. This is not -- as you have noticed  
17 before at the sale hearing, this is not an asbestos case. With  
18 respect to the amount of time for the proposed notice, I would  
19 note, as we noted in our papers, that the asbestos bar is  
20 probably among the most well organized bar in the country, and  
21 for them to suggest that they can't get claims filed within  
22 that period doesn't make any sense to me at all.

23 I will note that counsel's papers -- Mr. Esserman's  
24 and his colleagues' papers, refer to the Eagle-Picher case as a  
25 basis for there not being a bar date in an asbestos-related

1 personal injury case. I personally represented Eagle-Picher in  
2 its first Chapter 11 case where the first 524(g) injunction was  
3 obtained. And I can represent to the Court that in that case  
4 there was in fact a bar date for asbestos-related personal  
5 injury claims. That was a classic asbestos-related Chapter 11  
6 case. That was the sine qua non for the filing of a Chapter  
7 11. That is not what we have here. And we don't think there's  
8 any reason for these claims to be treated differently than a  
9 host of other tort claims in these cases.

10 THE COURT: Let me just ask you the one question that  
11 did occur to me when I was reviewing the papers. If I  
12 increased it from forty-five days to sixty, would that present  
13 you with problems?

14 MR. KAROTKIN: There is a lot of pressure from the  
15 creditors' committee to get distributions out as quickly as  
16 possible and propose a plan as quickly as possible. Your  
17 Honor, I cannot stand up in front of you and say that fifteen  
18 days is going to make a difference.

19 THE COURT: Um-hum.

20 MR. KAROTKIN: Mr. Rogoff is --

21 THE COURT: Maybe I should let Mr. Rogoff comment on  
22 it, because he's got to balance the concerns of fair notice to  
23 his constituency with getting appropriate -- I'm sure his  
24 people, and if I were in his shoes, I would too, want to get  
25 their distributions as quickly as possible. But I'm sure he

1 doesn't want to leave people locked out. So I'll get his  
2 comments. Maybe I should get them now, Mr. Rogoff.

3 MR. ROGOFF: Thank you, Your Honor. I'm actually  
4 going to make this very easy for the Court, I hope. We're not  
5 going to object to the extension by the fifteen days. The  
6 rationale, I think is, the Court has noted the tension between  
7 on the one hand, wanting to get the plan process completed  
8 diligently, and as everybody appreciates, the claims analysis  
9 is an important part of that; on the other hand, we also need  
10 to make sure that there is adequate notice of the bar date  
11 given. We do feel that the extra fifteen days of notice  
12 certainly helps all creditors in getting their claims in.

13 The other aspect of it, which will tie into  
14 exclusivity requests, Your Honor will note that we did file a  
15 response in support. And underlying that response, and of  
16 course tying into Your Honor's concern on this motion, is that  
17 we hope to be working with the debtors diligently during this  
18 extension period to try to formulate and analyze the very  
19 complex issues that could exist in the structure of a plan. It  
20 is a liquidating plan on the one hand, but we do have a variety  
21 of issues that we need to cross with them.

22 So given the time and the cooperation that we expect  
23 to have working with the debtor and its professionals on that  
24 process, as long as we're moving diligently on that, which I  
25 expect that we will, I don't see any global prejudice, weighing

1 and balancing all the considerations, to the extra fifteen  
2 days.

3 THE COURT: Well, I assume that both you and the  
4 debtors want to get your arms on the universe of claims that  
5 are out there, but that nobody's suggesting that they could be  
6 liquidated any time soon, and you'd know exactly how much any  
7 particular claimant's claim is?

8 MR. ROGOFF: We expect -- as Your Honor notes  
9 correctly, the first step is getting the claims in, seeing the  
10 universe of the unliquidated claims, and then dealing with a  
11 host of issues on the claims process that, in turn, tie into  
12 the plan formulation.

13 THE COURT: Right. Okay, thank you.

14 MR. ROGOFF: You're welcome.

15 THE COURT: Mr. D'Apice, may I hear you, please?

16 MR. D'APICE: Thank you. Peter D'Apice of Stutzman --

17 THE COURT: I'm sorry if I mispronounced your name.

18 MR. D'APICE: -- that's all right, Your Honor.

19 THE COURT: D'Apice?

20 MR. D'APICE: D'Apice, of Stutzman --

21 THE COURT: Okay. Thank you.

22 MR. D'APICE: -- Bromberg, Esserman & Plifka, on  
23 behalf of the ad hoc committee.

24 The first thing I want to do, Your Honor, is just  
25 quickly clear up the Eagle-Picher cite that we made. And what

1 we actually cited Eagle-Picher for in the case was not that  
2 there was no bar date set in that case. What we cited it for  
3 was two propositions. One is that the Eagle-Picher Court  
4 stated that "while such bar dates are commonly set in Chapter  
5 11 cases, upon good cause shown, the Court may dispense with  
6 one in a given case." Simply for that principle. And I'll  
7 later argue why asbestos claims give the Court the cause it  
8 needs to dispense with a bar date.

9 The other point that we cited Eagle-Picher for was to  
10 contrast it with this case. This case has been pending for  
11 what, three months. It is an exceptional case, there's no  
12 doubt about it. Forty-five days notice, under circumstances  
13 which I'll talk about in a minute, is not going to be adequate  
14 for the far-flung nationwide pool of claimants that's out  
15 there. But we cited Eagle-Picher for the other proposition,  
16 that that case had been pending over three years, and more than  
17 a hundred days' notice of the bar date was given. So just to  
18 compare that. So we did not -- if we confused Mr. Karotkin, I  
19 apologize. But we were citing it simply for the propo -- those  
20 two propositions.

21 Let me tell you why asbestos claims should be treated  
22 differently from other tort claims, particularly in a case like  
23 this. This may not be an asbestos-driven case, and it may  
24 not -- and adequately described or fairly described as an  
25 asbestos case, but that's kind of a label. What it is, it's a



1 case that has indisputably tens of thousands of potential  
2 asbestos claimants.

3 In terms of getting their arms around the scope of the  
4 potential exposure, General Motors has done analyses of using  
5 the standard econometrician methods that are used in  
6 handling -- in analyzing asbestos claims, to forecast its  
7 liability, to get a grip on what it's got and to forecast its  
8 liability. And that report was used, I believe in connection  
9 with the sale motion. It was the Hamilton, Rabinowitz &  
10 Associates report prepared in January of 2009. It is a  
11 confidential report. Its existence is not confidential. But  
12 it is a confidential report.

13 But needless to say, on the basis of that report, GM  
14 reserved hundreds of millions of dollars and is indisputably,  
15 given its long operation and its nationwide operation,  
16 international operation, is facing tens of thousands of claims.

17 What do you do with the proofs of claim when you get  
18 them? How do you handle those claims? The debtor's going to  
19 have to somehow enter that information into a database of some  
20 kind. The debtor's then going to have to adjudicate those  
21 claims in some way. Those people will have a right, for their  
22 personal injury claim, to have that adjudicated according to  
23 their due process rights; which means that they're entitled to  
24 a jury; it's not going to get adjudicated by this Court;  
25 they're entitled to -- if there's a claim objection filed, then

1 you start a contested matter. How is this Court possibly going  
2 to handle tens of thousands of contested matters, let alone  
3 10,000 contested matters, within any reasonable period of time?

4 And the reason this is kind of -- it's not sensible --  
5 respectfully, Your Honor, it's not sensible, because there's a  
6 well-worn path to handling mass tort claims like this. And it  
7 involves a postconfirmation trust that is set up and has trust  
8 clerks, basically, claims clerks, do what otherwise Your Honor  
9 would have to do in trying to liquidate a claim. Now --

10 THE COURT: Well, you said that I would liquidate. I  
11 don't think anybody would suggest that I would liquidate. I  
12 might estimate the claims, but -- which is a traditional  
13 bankruptcy judge function. But if they actually have to be  
14 liquidated and tried, I've got 157 problems, don't I?

15 MR. D'APICE: Yes, Your Honor, you do. And I would  
16 submit, Your Honor, that you can estimate, and claims have been  
17 estimated in other cases with mass tort liabilities. But what  
18 we have here, what I understand the debtor and the committee to  
19 say, is that this is going to be a liquidating plan. This is  
20 not a plan of reorganization of a company that's going to  
21 continue operating. This is a liquidating plan. So if any  
22 estimation leads to a number that then gets allocated to the  
23 asbestos claims, both present and unknown claimants, they're  
24 capped at that number, effectively.

25 THE COURT: Well, isn't that exactly why the debtors

1 and the creditors' committee want to get their arms around the  
2 universe of claims?

3 MR. D'APICE: I don't -- I agree that we need to get  
4 our arms around the universe of claims, Your Honor. And the  
5 way to do that -- the efficient way to do that, and a way  
6 that's been done in many other cases, is you have -- they had  
7 an econometrician, their expert, look at the database that GM  
8 already has in place, its claims history; they look at the  
9 allocation of the disease levels within that claims history;  
10 they look at factors -- the experts look at factors like  
11 propensity to sue for purposes of forecasting future claims  
12 that will come down the pipe.

13 As every day passes, some claimant who, the day before  
14 didn't have a claim, manifests and has a claim. As every day  
15 passes, there are more claimants coming up. And there are  
16 claimants in the future who haven't even been really thought  
17 about, or if they've been thought about, they're really getting  
18 sort of left in the lurch.

19 And this is another issue which I don't want to get  
20 into today, but Your Honor did suspend order or abate ruling on  
21 our earlier motion to appoint an asbestos committee. And I  
22 believe you denied the motion for appointment of a futures  
23 claims rep. I don't recall if that was done without prejudice.

24 But in terms of getting our arms around the set, the  
25 universe of asbestos claims against this company, proofs of

1 claims are kind of -- are an impractical burden. The debtor  
2 has to take those claims and enter them in. And ultimately, in  
3 order to forecast what the total liability might be, the  
4 debtor's best served by looking at its own database that it  
5 already has, its database of existing claims, resolved claims,  
6 its claims history. You look at the claims history and then  
7 you forecast the liability from that.

8 We've done that in other cases, Your Honor.  
9 Ultimately, that is where, I believe, courts want to end up,  
10 because it is the most efficient way -- I'm not saying it's  
11 going to happen in three months -- but it is the most efficient  
12 way to resolve the tens of thousands of claims. And it would  
13 also allow the debtor to not only get its arms around its  
14 liability and the creditors' committee to see what that  
15 liability is, and weigh in on it in some sort of estimation  
16 process that we can work out or that an asbestos committee  
17 could work out with the debtor and the creditors' committee,  
18 and negotiate some resolution that will give this debtor a  
19 trust that will be set up postpetition to handle all asbestos  
20 claims against GM.

21 The other thing I want to point out, Your Honor, is  
22 the bar date order that's proposed by debtor forbids anyone who  
23 fails to file a proof of claim from suing not only the debtor  
24 but any successor. And that brings us back into the whole  
25 successor liability issue that was raised in connection with

1 the sale. And so what we've got is a class of tort claimants  
2 who've been effectively left behind in Old GM, and now --

3 THE COURT: Isn't that an issue for the circuit or the  
4 United States Supreme Court?

5 MR. D'APICE: It may -- I think they've already spoken  
6 on the issue, Your Honor. I think the Second Circuit has --

7 THE COURT: Well, that's right. So my point is, I'm  
8 puzzled by your apparent desire to relitigate that issue when I  
9 ruled and at least seemingly properly anticipated what the  
10 circuit would say about that issue. Which means that we're now  
11 up to either an en banc by the Second Circuit in saying that it  
12 didn't mean it, or by the United States Supreme Court in saying  
13 that the Second Circuit got it wrong.

14 MR. D'APICE: I don't wish to relitigate the issue,  
15 Your Honor. All I'm pointing out is that if the goal here is  
16 to get our arms around the universe of asbestos claims and  
17 treat them fairly, there are well-worn paths and well-trod ways  
18 to do that.

19 THE COURT: No. Forgive me, Mr. D'Apice. Then I  
20 don't understand the thrust of your point that you want to get  
21 another bite at the apple on an injunction that protects the  
22 purchase.

23 MR. D'APICE: Your Honor, if a 524(g) trust were  
24 established, that's a possibility.

25 THE COURT: No, forgive me. Because I don't know if

1 this is just aggressive advocacy or if it's out of line. But I  
2 ruled at some length on whether or not there would be  
3 injunctive protections against the purchaser on claims that are  
4 claims against this estate on successor liability issues. I  
5 ruled on the basis of a Second Circuit order which later was  
6 followed by a Second Circuit opinion which laid it out at much  
7 greater length even than I did, and I've been justifiably  
8 criticized for writing an awful lot sometimes, perhaps more  
9 than I need to.

10 So what are you telling me that you want to do about  
11 objecting to the injunction that I previously ordered?

12 MR. D'APICE: Your Honor, I'm not here to object to  
13 the injunction that you previously ordered. That was not my  
14 intent. My only intent was to describe the methodology that's  
15 been used in other cases for handling mass torts, mass  
16 asbestos -- numbers of asbestos claims. I wasn't trying to  
17 relitigate the injunction or talk about -- or challenge the  
18 injunction issue. I was just talking about how to handle  
19 asbestos claims in a bankruptcy case. And one way to do it is  
20 the 524(g) trust, as Your Honor --

21 THE COURT: One way to do it is a 524(g) trust. And  
22 parties can be heard and discuss with each other as to whether  
23 that's necessary or appropriate here. But I don't see how  
24 that's an issue for today.

25 MR. D'APICE: Well, I understand, Your Honor. I'm

1 only offering that up as an option, because if such a trust  
2 were established, a bar date and proofs of claims would not be  
3 necessary and would be a waste of debtor assets, because they  
4 wouldn't really look at the proofs of claims.

5 My only point, Your Honor, is that if you get the  
6 proofs of claims and you try to estimate them here in this  
7 Court, we've got a liquidating plan. So they will  
8 effectively -- and this issue may have to be briefed -- but  
9 they would effectively be estimated for liquidation purposes,  
10 for distribution purposes. Unless I'm missing something, Your  
11 Honor, there's no -- if a claim is estima -- if a tort  
12 claimant's claim is estimated and it turns out the estimate  
13 is -- it's estimated for purposes of allowance of the claim and  
14 for purposes of the plan but not for distribution, if it later  
15 turns out that the estimation was too low, I believe the tort  
16 claimant has a right to come back and seek to have that  
17 remedied. But in this case, I don't see where there would be  
18 any ability to come back, because it's a liquidating claim.  
19 Unless I'm missing something, Your Honor, I don't see where  
20 that's an issue.

21 So my only point was that yes, estimation is I think  
22 an advisable way to go. I think it works. But you don't need  
23 proofs of claim for estimation. It adds a layer of bureaucracy  
24 in the case that's not only trouble -- a burden on the  
25 claimants, but it also ultimately will be a burden on the

1 debtor. But that's their choice, and I'm not going to -- if  
2 they want to do that, I'm not going to dispute that.

3 But in terms of the notice that's given, Your Honor,  
4 again, I point out, this company's been operating for decades,  
5 and it has far-flung operations, and there's claimants in  
6 virtually all the states. The debtor's database will reflect  
7 where the bulk of those claimants are. Many of them are not --  
8 probably, I don't know this for a fact, but I would assume that  
9 many of the claimants, particularly those whose claims are  
10 accruing most recently, are not yet represented by counsel.

11 How are all these people going to be noticed? Is  
12 debtor planning to send notices to all of the tens of thousands  
13 of claimants that it knows about already in its databases? I  
14 don't know the answer to that, Your Honor. I think that would  
15 potentially be a very expensive undertaking. Is it planning to  
16 advertise in newspapers in the locales, the regions, the states  
17 where the bulk of these claimants are? I don't see that they  
18 volunteered that, Your Honor.

19 And in terms of notifying -- publishing notices in the  
20 national papers, I think, Your Honor, with respect, I think the  
21 bar, it may have pockets of it that are well organized, but  
22 there are also many attorneys out there who are not part of any  
23 well-organized network, and these things -- for this number of  
24 claimants, I would respectfully submit, they need to be heavily  
25 noticed and ample time given for claimants to recognize that



1 they have claims against Motors Liquidation and any of the  
2 other entities that the debtors that survive and have been  
3 renamed, and they can pursue those claims.

4 Your Honor, with all respect, the debtor is, as we all  
5 know, a fiduciary to its creditors. It holds a high duty to  
6 those creditors. And the notice that should be given under the  
7 case law that we've cited and under the Mulane (ph.) Supreme  
8 Court case from Judge Jackson, is the kind of notice you would  
9 give if you actually wanted people to get the notice. And in  
10 order to do that, with the tens of thousands of claimants,  
11 we're talking about a tremendous amount -- it seems to me, a  
12 tremendous amount of time and effort spent identifying, finding  
13 their addresses, if you don't have their addresses, for some  
14 reason, and mailing the notice out to them.

15 THE COURT: Are the people who assert asbestos claims  
16 people who worked in factories where brake linings or other car  
17 components were crafted, or are there consumers who somehow say  
18 that by driving a Chevy you get asbestos exposure?

19 MR. D'APICE: I don't know about the latter, Your  
20 Honor. I would imagine that the claimants include workers in  
21 manufacturing. I understand also that the claimant class would  
22 include workers who repaired automobiles or who worked on  
23 brakes or other component parts that had asbestos in them,  
24 whether they were repairing them, cutting them, or whatever.

25 THE COURT: Well, local garages would be all over the

1 country. Are you suggesting that some kind of notice has to be  
2 crafted that's going to capture every mechanic in every garage  
3 across the United States?

4 MR. D'APICE: No, Your Honor. What I'm suggesting is  
5 that if debtor has a database, as we've seen in their papers, a  
6 database of existing claimants or known claimants, that those  
7 claimants, I think, would need to receive mail notice. And  
8 whether or not debtor has all their addresses, I don't know.  
9 But I think those people need to receive notice by mail.

10 The motion, I thought was a little -- you know, the  
11 motion says if we've got their addresses we'll use them; if we  
12 don't have them, we won't use them. I think the burden on the  
13 debtor is a little bit higher than that with respect to its  
14 known creditors. I believe it has to find the addresses for  
15 those people and mail out the notices.

16 And then when you do publications in the national  
17 papers, if you want to be sure to cover the area and give  
18 adequate notice, I think we've also got to include publications  
19 like Mealey's. I mean, I'd point out to Your Honor, in  
20 debtor's reply, they attached the bar date order from the  
21 Quigley case. And this was attached to debtor's reply filed  
22 Friday. And in Quigley, not only did -- the order I'm looking  
23 at, I didn't see any other orders from Quigley. But the order  
24 that I'm looking at carved out asbestos-related personal injury  
25 claims from the bar date. It said, "Holders of the following

1 claims need not and should not file a proof of claim on or  
2 before the general claims bar date." And one of them is "an  
3 asbestos-related personal injury claim, other than a claim for  
4 contribution, indemnity, reimbursement or subrogation."

5 And it also included publication notice in the  
6 Mealey's litigation report for silica. So I imagine there was  
7 silica claims in that case. I'm not sure. I haven't gone back  
8 since Friday to look at the Quigley case. But in Quigley, at  
9 least, there was at least the asbestos claimants were carved  
10 out from or excluded from the general bar date. Whether they  
11 had a later bar date, I don't know, they may well have. And  
12 that may make sense.

13 But it's not an unusual thing to either -- to not set  
14 a bar date for asbestos claims or to set a later bar date.  
15 It's not unusual, Your Honor, and in purposes of this case, for  
16 trying to get these claims resolved, our recommendation would  
17 be that no bar date be set and that the claims be resolved  
18 using the kind of econometrician analysis that's been done in  
19 other cases.

20 With that, I would respectfully recommend  
21 reconsideration. This is not the proper point for that to  
22 pursue the reconsideration. But the ad hoc committee's motion  
23 for the appointment of an asbestos claimants committee is still  
24 pending. Your Honor abated that, abated ruling on that until  
25 later in the case. And this may be an appropriate point in the

1 case for reconsideration of that motion so that we can get a  
2 committee in place that can represent the interests of this  
3 body of creditors.

4 With a procedure for doing that, I don't know. I'm  
5 not prepared to argue it today, but I toss that out there as a  
6 thought for Your Honor and as a way to resolve these claims in  
7 a sensible way.

8 THE COURT: What is the Nealey's (sic) to which you  
9 were making reference?

10 MR. D'APICE: I'm sorry, Your Honor.

11 THE COURT: What is the Nealey's (sic) to which you  
12 were making reference?

13 MR. D'APICE: It's a Mealey's publication on asbestos.  
14 Mealey's asbestos litigation.

15 THE COURT: It's like a newsletter that goes to  
16 asbestos lawyers?

17 MR. D'APICE: Mealey's, it goes out to --

18 THE COURT: Is it Mealey's with an M or Nealey's with  
19 an N?

20 MR. D'APICE: I'm sorry. Mealey's with an M as in  
21 Michael. It's M-E-A-L-E-Y-S. Mealey's litigation reports.  
22 They do it typically for -- or they have a large publication  
23 for insurance. They've evidently got one for silica. They  
24 have one for asbestos. And they publish, I believe it's a  
25 monthly basis. And it's read by whoever subscribes to it, Your

1 Honor. But I think at least in the asbestos industry, it's a  
2 good source for keeping people apprised of what's happening in  
3 the asbestos world.

4 THE COURT: All right. Thank you. Anybody want to be  
5 heard for a first time before I give people a second chance to  
6 be heard?

7 Okay. Mr. Karotkin, do you want to reply?

8 MR. KAROTKIN: Thank you, Your Honor. Stephen  
9 Karotkin, Weil, Gotshal & Manges, for the debtors.

10 First of all, let me assure Mr. D'Apice, I wasn't  
11 confused by his citation to the Eagle-Picher case at all, but I  
12 thank him for his clarification.

13 I think, Your Honor, you put your finger on it when  
14 you distinguished between the claims filing process and the  
15 claims adjudication process and the claims estimation process,  
16 and recognized that in many cases where there are asbestos-  
17 related claims, the Court certainly has the authority to  
18 estimate the claims for the purposes of plan confirmation. And  
19 certainly the debtors need to know the universe of claims,  
20 together with the creditors' committee, to get to the plan  
21 formulation process. And I'm sure that Mr. D'Apice will  
22 recognize that in connection -- although this is not an  
23 asbestos case, and I'm not suggesting that it is -- in  
24 connection with the estimation of any asbestos-related  
25 liability, the starting point is the universe of present

1 claims. We don't have that yet.

2 We have lawsuits that have been filed. And we will  
3 certainly -- let me make it perfectly clear, notice of the bar  
4 date will be given to the attorneys of record in all of those  
5 lawsuits that have been commenced. And there may be other  
6 claims out there.

7 THE COURT: I assume that the great bulk of the people  
8 asserting asbestos claims do it through lawyers. But I assume  
9 if any individual contacted the company and says I think I have  
10 an asbestos claim, you would be mailing notice to --

11 MR. KAROTKIN: Absolutely.

12 THE COURT: -- any such person?

13 MR. KAROTKIN: Absolutely, sir. To the extent that  
14 publication is inadequate, I find it kind of funny that Mr.  
15 D'Apice says we ought to publish in Mealey's. Mealey's is for  
16 asbestos lawyers, the plaintiffs' lawyers. And if he is  
17 purporting to stand up before this Court and say the asbestos  
18 lawyers in the United States do not know that General Motors is  
19 in Chapter 11, I would find that absolutely astonishing,  
20 absolutely astonishing. They know what's going on. He is  
21 certainly in contact with them. He knows what's going on.  
22 He's been before this Court.

23 I think that what he's trying to do is revisit a  
24 number of issues, and I think you called him on that. Look,  
25 this case is no different than any other case. This is not an

1 asbestos case. There are asbestos claims out there. They will  
2 be get appropriate notice. The notice that we're providing is  
3 well-designed to reach potential claimants out there. It is  
4 being widely published. It's being published in USA Today.  
5 Your Honor, we think the notice is more than adequate.

6 We are not trying to bind future claimants, obviously,  
7 as Your Honor alluded to, those issues have been addressed by  
8 Your Honor as well as the Second Circuit. No one is requesting  
9 or requiring that future claimants file claims because they  
10 can't file claims. And they certainly are not going to be, nor  
11 will we take the position that pure future claimants are barred  
12 by any proposed order you enter in connection with the bar  
13 date.

14 But again, we are prepared to move forward. We think  
15 there's adequate notice. If Your Honor has suggested and would  
16 like us to give an additional fifteen days notice, I think we  
17 all are amenable to that.

18 I would just like to point out one or two other things  
19 that are more in the nature of housekeeping, if I may. First  
20 of all, if you change the date, it really doesn't matter. But  
21 it turned out that, I believe, November 9th was a Sunday so we  
22 had to change it to November 10th. We've also added, at the  
23 request of the committee, a list at the end of the proposed  
24 notice that lists the bond indentures and the QSIP numbers, so  
25 people who have bond claims will be able to recognize that to

1 the extent they purely have a claim under a bond indenture,  
2 that they don't have to file claims.

3 THE COURT: This is a standard situation where they've  
4 been scheduled, and even if they hadn't been scheduled, you'd  
5 have a claim by the indenture trustee?

6 MR. KAROTKIN: Yes, sir. It does provide that the  
7 indenture trustee has the authority to file the claim, and it's  
8 not necessary for individual bondholders to file claims. It's  
9 simply based on the claim under the bond indenture. If they  
10 have other claims, obviously they --

11 THE COURT: Of course.

12 MR. KAROTKIN: -- would be required. But again, we  
13 think we've complied with the rules. We think notice is  
14 adequate. And I think that Mr. D'Apice is raising a lot of red  
15 herrings, because simply the plaintiff lawyers don't want to be  
16 bothered. Thank you.

17 THE COURT: All right. Mr. Rogoff?

18 MR. ROGOFF: Just briefly, Your Honor. Adam Rogoff on  
19 behalf of the committee. Briefly, Your Honor, from the  
20 committee's perspective, we look back at the interests of all  
21 the creditor groups that are out there. And one thing I note  
22 is we spent time this morning talking about the asbestos  
23 claimants. But there are also many other types of tort  
24 claimants in this case: personal injury victims --

25 THE COURT: Such as somebody who's in a car wreck?



1 MR. ROGOFF: Exactly, Your Honor. And I'm not  
2 advocating an expansion or exclusion, to say it differently, of  
3 the bar date for those tort claimants. I'm simply pointing out  
4 that there are many other tort claimants in these cases who are  
5 required to comply with the bar date. And as a result, I don't  
6 believe that we should be picking and choosing among tort  
7 claimants to the prejudice of others, let alone to the  
8 prejudice of other unsecured creditors in these cases.

9 Your Honor did note that distinction at the beginning  
10 of his questioning, and I just thought it would be helpful, as  
11 we've come presumably to the conclusions of the oral arguments,  
12 just to note that that is correct. There are many other tort  
13 claimants in these cases who are going to be bound by the bar  
14 date. And that does help the estate as a whole map out the  
15 appropriate plan process for all creditors.

16 THE COURT: Okay.

17 MR. ROGOFF: Thank you.

18 THE COURT: Everybody had a chance to be heard? All  
19 right, sit in place, everybody.

20 (Pause)

21 THE COURT: All right. Ladies and gentlemen, subject  
22 to some adjustments in the timing of the notice period and a  
23 few words in the notice, I'm approving the debtors' motion.  
24 And the following are the bases for the exercise of my  
25 discretion in this regard.

1           The asbestos litigants' objection, when one puts aside  
2           its hints that I should reconsider matters that I've already  
3           ruled upon, boils down to two principal points, one of which is  
4           that there should be a special rule for asbestos litigants,  
5           absolving them from the duty applicable to all other creditors  
6           in this case, to file proofs of claim, if their claims have not  
7           been previously scheduled, or where they might be represented  
8           by indenture trustees or other special representatives. And it  
9           argues that there should be special notice directed to the  
10          subset of the creditors' community which might be asserting  
11          asbestos claims.

12           In each case, I believe that that request is  
13          inappropriate. In my view, for the reasons that Mr. Rogoff  
14          mentioned and similar reasons that he could have mentioned if  
15          he had spoken at greater length, there should not be a special  
16          rule for asbestos litigants, especially where, as here, that  
17          raises the risk if not the certainty, of prejudice to the  
18          remainder of the creditor community, which, to the extent it  
19          matters, and frankly I think it does, is much, much larger than  
20          the subset of the creditor community that is asserting asbestos  
21          claims.

22           Asbestos claims -- and remember, we're talking about  
23          present claims, we're not talking about future claims -- are a  
24          species of personal injury claim. And nobody has suggested,  
25          properly in my view, that there should be a special rule for

1 general tort litigants such as products liability litigants,  
2 people who are in car wrecks. And we have to keep our eye on  
3 the ball, which is to get our arms around the universe of  
4 claims. We're not going to be able to liquidate them all that  
5 quickly, of course, but we'll know what's out there, so that we  
6 can get value into the pockets of the creditors as quickly as  
7 possible.

8 I don't think it's either necessary or appropriate for  
9 me to prejudge how the debtor and the creditors' committee are  
10 going to be putting their noodles together to structure the  
11 liquidating plan. But it's at least conceivable, by way of  
12 example, that they might want to create a reserve to deal with  
13 claims that can't be liquidated right away and get value out to  
14 those people whose claims are fixed, so that the entirety of  
15 the creditor community doesn't have to be penalized for  
16 uncertainty.

17 I don't know if they'll choose that approach or not,  
18 but one thing that they need to do before they can work out the  
19 mechanics for getting value into the pockets of creditors, is  
20 to get their arms around the universe of claims. That seems to  
21 me so fundamental and so commonsense that I don't see how any  
22 reasonable person could quarrel with that.

23 Now, I thought that an extra couple of weeks would be  
24 in the interests of the creditor community, and that seems to  
25 have elicited no significant objection. The task, as we talked

1 about in colloquy, is to balance the needs and concerns of the  
2 entirety of the creditors community in getting value out to  
3 creditors by keeping moving the case forward, against the need  
4 which we have to be careful about, which is to cut off their  
5 opportunity to file claims. And for that reason, in the  
6 exercise of my discretion, I think sixty days is better than  
7 forty-five. But I think that with that adjustment, what the  
8 debtors have proposed is appropriate. And I'm going to approve  
9 them.

10 Then we get to the quality of the notice and the  
11 quality of the publication. I think the debtors said that I  
12 don't need to order it because they're doing it anyway, which  
13 is actual mailed notice to all of the lawyers who have  
14 represented asbestos claimants. And I understand that to mean  
15 people who either filed suit or wrote letters or made phone  
16 calls or otherwise told the debtors that they intend to assert  
17 those claims or that they're asserting them. And to the extent  
18 they're not represented by counsel, and frankly I think the  
19 great bulk are represented by counsel, but to the extent  
20 they're not, similar notice to them.

21 That's going to be the legislative history of this  
22 order, Mr. Karotkin. And I don't care whether it says that  
23 you're going to do that in the order or whether you do it  
24 without me ordering it, but one way or another, I expect you to  
25 see that they get that notice that you said they would get.

1 I also considered the publication that's been proposed  
2 to be satisfactory, especially since it's obvious to me that  
3 the lawyers in the asbestos claim community are more than  
4 capable of communicating with each other, and that they do that  
5 all the time.

6 One point that was made in the papers did hit a  
7 responsive chord with me. I'm not going to direct that the  
8 notice be rewritten, but I think that the objection that it was  
9 wordy and lawyeresque and legalesesque was well taken. I think  
10 as a matter of best practices, the debtors' community should  
11 start working on preparing its bar date notices in something  
12 closer to plain English. But I am not going to, today, order  
13 that something that would be a matter of best practices will be  
14 turned into a requirement, at least not in this case.

15 I will say that one of the common lawyer habits of  
16 using three words to express one, I think, because it's so  
17 important, needs to be fixed. So instead of saying that if  
18 they don't file claims they're going to be barred, estopped and  
19 enjoined, or whatever the exact words that were used in that  
20 draft notice, the notice should say that if you don't timely  
21 file your proof of claim, you're going to be barred "dash"  
22 forbidden "dash" from asserting the claim thereafter.

23 I don't know what estopped means in this sense. I'm  
24 not going to be sending out injunctions to a zillion people.  
25 I'll see what the exact words were that troubled me. I think I

1 paraphrased them reasonably close.

2 (Pause)

3 MR. KAROTKIN: Your Honor, I believe it's in paragraph  
4 6 of the notice. Third line?

5 THE COURT: Right you are, Mr. Karotkin. And my  
6 memory of the words that had been used was pretty accurate. So  
7 in that paragraph 6, instead of saying "barred, estopped and  
8 enjoined," I want you to say "barred - that is forbidden - from  
9 asserting the claim," going on. I don't want to use three  
10 words where one is sufficient, and I want it to be of a type  
11 that a person of ordinary intelligence understands the  
12 consequence of not doing it.

13 With those adjustments, the motion is granted and the  
14 notice is approved. And Mr. Karotkin, I'll leave it to you and  
15 your folks to paper the ruling and implement it.

16 MR. KAROTKIN: Thank you, sir.

17 THE COURT: All right, folks. I don't know if this is  
18 you, Mr. Karotkin, or you, Mr. Smolinsky. I think we have a  
19 number of other matters that are not controversial. Do you  
20 want me to do them, or do you just want to submit orders on  
21 them or how would you like me to proceed on that?

22 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky.  
23 We'd be happy to submit orders. There is one matter on the  
24 10:30 calendar, the Environmental Testing, that I think I'd  
25 like to just explain where we came out.

1 THE COURT: Yes. If you don't have anybody showing up  
2 at 10:30, can we do it right now?

3 MR. SMOLINSKY: We certainly can, Your Honor.

4 THE COURT: Okay. Let's do it.

5 MR. SMOLINSKY: Your Honor, you'll recall that the  
6 subject lease was rejected earlier in these cases. ETC then  
7 filed a motion for allowance of an administrative expense and a  
8 motion for payment of an administrative expense for real estate  
9 taxes, amounts due under service contracts, and approximately  
10 1.8 million dollars for environmental remediation and  
11 restoration of the property. The lease, when it was rejected,  
12 had about six months to run on the lease.

13 The debtors have been working with ETC to reconcile  
14 the claims and to try to come to grips with the different --  
15 the types of claims. And we ultimately came to resolution  
16 embodied in a stipulation. ETC is going to receive an  
17 administrative expense claim in the amount of 65,000 dollars,  
18 which will be paid within seven business days of entry of a  
19 final order. Additionally, ETC will receive an unsecured  
20 prepetition claim in the amount of 975,000 dollars, which is in  
21 full and final satisfaction of all of their remaining rejection  
22 claims and any other claims that they might have, under the  
23 lease or otherwise.

24 And I think, Your Honor, that that fully resolves the  
25 matter. We have a stipulation which we can hand into chambers.

1 THE COURT: Okay. That's fine, Mr. Smolinsky. And  
2 why don't you or one of your folks just drop it off across the  
3 hall when we're done?

4 MR. SMOLINSKY: Thank you, Your Honor.

5 THE COURT: And actually, I think we are done now,  
6 aren't we?

7 MR. SMOLINSKY: We are, Your Honor.

8 THE COURT: Okay. Thank you, folks. Have a good day.

9 MR. SMOLINSKY: Thank you, Your Honor.

10 (Proceedings concluded at 9:59 a.m.)  
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I N D E X

RULINGS

	Page	Line
Debtors' Motion for Order	33	23
Pursuant to Section		
502(b)(9) of the		
Bankruptcy Code and		
Bankruptcy Rule		
3003(c)(3) Establishing		
the Deadline for Filing		
Proofs of Claim Approved		
with Modifications		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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Penina Wolicki

Veritext LLC  
200 Old Country Road  
Suite 580  
Mineola, NY 11501

Date: September 15, 2009